

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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ROBERT J. MALLETTTE,

Plaintiff,

-v.-

Civil Action No.  
7:07-cv-1159 (GLS/GHL)

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

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APPEARANCES:

OF COUNSEL:

**FOR THE PLAINTIFF:**

Office of Christine A. Scofield  
506 East Washington Street  
Suite D  
Syracuse, New York 13202

CHRISTINE A. SCOFIELD, ESQ.

GARY L. SHARPE,  
U.S. DISTRICT JUDGE

**ORDER**

On November 1, 2007, plaintiff filed a complaint seeking Social Security Disability Benefits. See *Dkt. No. 1*. On April 10, 2008, Judge Lowe issued an Order to Show Cause directing the plaintiff to serve the defendant with the summons and complaint or show cause why the court should not recommend dismissal. See *Dkt. No. 6*. On May 30, 2008, since plaintiff's

counsel, Ms. Christine Scofield never responded, Judge Lowe issued a Report-Recommendation that the action be dismissed for failure to serve the defendant within the time limits imposed by FRCP 4(m) and Local Rule 4.1(b). See *Dkt. No. 7*. Thereafter, Ms. Scofield contacted the court advising that she never received a copy of the Order to Show Cause and Report-Recommendation. On June 13, 2008, plaintiff requested an extension of (30) thirty days to serve the defendant and requested that the Report-Recommendation be denied. See *Dkt. No. 8*. The court granted plaintiff's request for a (30) thirty day extension to serve the defendant but reserved decision as to the Report-Recommendation. See *Dkt. No. 9*. The court mailed copies of the summons and order to the plaintiff.<sup>1</sup> On June 18, 2008, the court issued an amended order directing the plaintiff to serve the defendant and file proof of service electronically with the court on or before July 17, 2008. The court again reserved decision on the Report-Recommendation pending plaintiff's compliance with the order. See *Dkt. No. 10*. Now, the deadline for service and filing proof of service has expired. The plaintiff has failed to file proof of service as directed. Accordingly, following a Report-Recommendation by Magistrate Judge George H. Lowe,

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<sup>1</sup>Ms. Christine Scofield indicated technical issues, thus the court in an effort to expedite matters directed the clerk to mail copies of the summons and order to plaintiff's counsel.

duly filed May 30, 2008. Following ten days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections<sup>2</sup> having been filed, and the court having reviewed the Magistrate Judge's Report-Recommendation for clear error, it is hereby

ORDERED, that the Report-Recommendation of Magistrate Judge George H. Lowe filed May 30, 2008 is ACCEPTED in its entirety for the reasons state therein, and it is further

ORDERED, that this action is dismissed for failure to serve the defendant within the time limits imposed by Federal Rule of Civil Procedure 4(m), Local Rule 4.1(b), and this court's order, and it is further

ORDERED, that the Clerk of the Court enter a judgment in favor of the defendant against the plaintiff, and it is further

ORDERED, that the Clerk of the court serve a copy of this order upon the parties.<sup>3</sup>

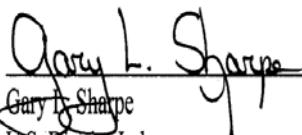
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<sup>2</sup>Even if the court was to construe plaintiff's letter (*See Dkt. No. 8*) as an objection to the report-recommendation, the court afforded plaintiff another opportunity to serve the defendant and file proof of service by July 17, 2008. (*See Dkt. No. 10*). However, the plaintiff failed to file proof of service as directed in this court's prior order.

<sup>3</sup> In an abundance of caution, the court directs the clerk to serve a copy of this order upon plaintiff's counsel by mail. However, plaintiff's counsel is reminded that all technical difficulties must be resolved to be in compliance with the Northern District of New York's filing requirements pursuant to General Order 22.

IT IS SO ORDERED.

Dated: September 2, 2008  
Albany, New York

  
Gary L. Sharpe  
U.S. District Judge